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3 UNITED STATES DISTRICT COURT  
4 WESTERN DISTRICT OF WASHINGTON  
5 AT TACOMA

6 JEFFREY R. MCKEE,

7 Plaintiff,

8 v.

9 D. CHERRY, et al,

10 Defendants.

Case No. 09-5208FDB-KLS

ORDER DIRECTING SERVICE BY  
UNITED STATES MARSHAL AND  
PROCEDURES

11  
12 This civil rights action has been referred to the undersigned Magistrate Judge pursuant to  
13 Title 28 U.S.C. § 636(b)(1)(B). Plaintiff has been granted leave to proceed *in forma pauperis*.

14 The Clerk is directed to effect service as provided below:

15 (1) Service by United States Marshal

16 It is hereby ORDERED that the United States Marshal shall send the following to each  
17 named defendant by first class mail: a copy of the complaint (Dkt. #5) and of this Order, two  
18 copies of the Notice of Lawsuit and Request for Waiver of Service of Summons, a Waiver of  
19 service of Summons, and a return envelope, postage prepaid, addressed to the Clerk's Office.  
20 All costs of service shall be advanced by the United States. The Clerk shall assemble the  
21 necessary documents to effect service. The Clerk also shall send a courtesy copy of the  
22 complaint to the Washington State Office of the Attorney General.  
23

24 (2) Response Required

25 Defendants shall have **thirty (30) days** within which to return the enclosed Waiver of  
26 Service of Summons. Each defendant who timely returns the signed Waiver shall have **sixty**

1 **(60) days** after the date designated on the Notice of Lawsuit to file and serve an answer or a  
2 motion directed to the complaint, as permitted by Federal Rule of Civil Procedure (“Fed. R. Civ.  
3 P.”) 12.

4 Any defendant who fails to timely return the signed Waiver will be personally served  
5 with a summons and complaint, and may be required to pay the full costs of such service,  
6 pursuant to Fed. R. Civ. P. 4(d)(2). A defendant who has been personally served shall file an  
7 answer or motion permitted under Rule 12 within **thirty (30) days** after service.  
8

9 (3) Filing and Service by Parties, Generally

10 All original documents and papers submitted for consideration by the Court in this case,  
11 and a duplicate of all such papers, are to be filed with the Clerk of this Court. The originals and  
12 copies of all such papers shall indicate in the upper right-hand corner the name of the Magistrate  
13 Judge to whom the copies are to be delivered. The papers shall be accompanied by proof that  
14 such documents have been served upon counsel for the opposing party (or upon any party acting  
15 *pro se*). The proof shall show the day and manner of service and may be written  
16 acknowledgment of service, by certificate of a member of the bar of this Court, or by affidavit of  
17 the person who served the papers.  
18

19 (4) Motions

20 Any request for Court action shall be set forth in a motion, properly filed and served,  
21 pursuant to the requirements of Local Rule CR 7. If a party fails to file and serve timely  
22 opposition to a motion, the Court may deem any opposition to be without merit.  
23

24 (5) Motions for Summary Judgment

25 If one of the parties files a motion for summary judgment pursuant to Fed. R. Civ. P. 56,  
26 the opposing party should acquaint him/herself with Fed. R. Civ. P. 56. Fed. R. Civ. P. 56

1 requires a nonmoving party to submit affidavits or other evidence in opposition to a motion for  
2 summary judgment if the moving party has shown the absence of issues of material fact and an  
3 entitlement to judgment as a matter of law. A nonmoving party may not rest upon the mere  
4 allegations or denials of prior pleadings. Rather, successful opposition to a motion for summary  
5 judgment requires the nonmoving party to set forth, through affidavits or other evidence, specific  
6 facts showing a genuine issue for trial. Failure by the nonmoving party to oppose a summary  
7 judgment motion or to present counter evidence could result in the Court accepting the moving  
8 party's evidence as the truth, and entering final judgment in favor of the moving party without a  
9 full trial. Rand v. Rowland, 113 F.3d 1520 (9th Cir. 1997).

11 (6) Direct Communications with District Judge or Magistrate Judge

12 No direct communication is to take place with the District Judge or Magistrate Judge with  
13 regard to this case. All relevant information and papers are to be directed to the Clerk.

14 (7) Clerk's Action

15 The Clerk is directed to send a copy of this Order and of the General Order issued by the  
16 Magistrate Judges to plaintiff and to defendants and defendants' counsel, if any.

17 DATED this 5th day of May, 2009.

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22 Karen L. Strombom  
23 United States Magistrate Judge  
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